

CHAPTER 45

CONSTRUCTION CONTROL

Authority

N.J.S.A. 27:1A-5, 27:1A-6 and 27:2-1 et seq.

Source and Effective Date

R.2003 d.66, effective January 10, 2003.
See: 34 N.J.R. 2537(a), 35 N.J.R. 622(a).

Chapter Expiration Date

Chapter 45, Construction Control, expires on January 10, 2008.

Chapter Historical Note

Chapter 45, Construction Control, was adopted as R.1989 d.505, effective September 18, 1989. See: 21 N.J.R. 1972(c), 21 N.J.R. 3020(b).

Pursuant to Executive Order No. 66(1978), Chapter 45, Construction Control, was readopted as R.1994 d.454, effective August 12, 1994, and Subchapter 1, General Provisions, and Subchapter 4, Claims Review Board, were adopted as new rules and Subchapter 1, Claims Committee, and Subchapter 2, Substantial Competition, were recodified Subchapters 2 and 3 by R.1994 d.454, effective September 6, 1994. See: 26 N.J.R. 2547(b), 26 N.J.R. 3740(c).

Pursuant to Executive Order No. 66(1978), Chapter 45, Construction Control, was readopted as R.1999 d.246, effective July 9, 1999, and Subchapter 3, Substantial Completion, was recodified as Subchapter 5 by R.1999 d.246, effective August 2, 1999. See: 31 N.J.R. 1295(a), 31 N.J.R. 2236(a).

Chapter 45, Construction Control, was readopted as R.2003 d.66, effective January 10, 2003. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

16:45-1.1 Scope and purpose

This chapter establishes the Department's Claims Committee and non-binding mediation processes and procedures. These two claims review forums are part of the contractual claims resolution process that is available to contractors whose claims meet the requirements for review contained in contracts administered either by Transportation Capital Program Management or Transportation Operations. Participation by a contractor in this claims resolution process is voluntary. The Department establishes these forums for the purpose of reviewing the merits of claims and facilitating the resolution of contract disputes. This chapter also defines the term "substantial completion" as required by the Legislature pursuant to N.J.S.A. 27:7-34.

Amended by R.1999 d.246, effective August 2, 1999.
See: 31 N.J.R. 1295(a), 31 N.J.R. 2236(a).

Rewrote the section.
Amended by R.2003 d.66, effective February 3, 2003.
See: 34 N.J.R. 2537(a), 35 N.J.R. 622(a).
Rewrote the section.

16:45-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Specifications" means the compilation of provisions and requirements of the standard specifications, supplemental specifications, special provisions, addenda and other contract modifications comprising the contract under which a claim by a contractor arises.

Amended by R.1999 d.246, effective August 2, 1999.
See: 31 N.J.R. 1295(a), 31 N.J.R. 2236(a).

Rewrote "Specifications"; and deleted "Standard specifications" and "Supplementary specifications".

16:45-1.3 Litigation of claims by contractor

Exhaustion of the contractual claims resolution procedure, as set forth under the contract specifications and this chapter, shall not be a prerequisite to the filing of a legal action against the Department. The Contractual Liability Act, N.J.S.A. 59:13-1 et seq., establishes prerequisites and conditions as to the litigation of a claim against the Department. If a contractor brings a legal action against the Department or any officials or employees thereof, allegedly arising out of or related to claims filed against the Department, any pending contractual claims resolution process at any step shall terminate as to those claims and as to related claims being litigated, whether or not the review has been completed at a particular step. Once a contractor files a legal action, the Department shall not review or process any claims related to the litigation at any of the various steps provided under this chapter or under the contract specifica-

tions. Unless and until the legal action is dismissed, those claims and related claims instead shall be resolved under the legal action, subject to the provisions of the Contractual Liability Act, N.J.S.A. 59:13-1 et seq. The contractor may submit to the Department, for processing through the various steps of the claims resolution procedure, any claims that are unrelated to pending litigation, subject to the terms of the specifications and the Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

New Rule. R.2003 d.66, effective February 3, 2003.
See: 34 N.J.R. 2537(a), 35 N.J.R. 622(a).

SUBCHAPTER 2. CLAIMS COMMITTEE

16:45-2.1 Establishment of Claims Committee

(a) The Commissioner of Transportation hereby establishes the Claims Committee for the purpose of reviewing and resolving claims arising from construction contracts administered by Capital Program Management or Operations. Claims are eligible for review by the Claims Committee subject to the specifications applicable to a particular contract. The presentation of a claim to the Claims Committee shall in no way alter or affect other rights of a contractor, including the right, pursuant to the Contractual Liability Act, N.J.S.A. 59:13-1 et seq., to seek redress in the courts. Said presentation to the Claims Committee shall in no way alter or affect the applicable statute of limitations. A contractor's request to have a claim reviewed by the Claims Committee is considered to be a form of alternate dispute resolution (ADR) and a settlement procedure available to the contractor; a Claims Committee decision, when conveyed to the contractor, constitutes a settlement offer.

(b) As to claims arising under contracts administered by Transportation Capital Program Management, the Claims Committee shall be comprised of three voting members. The Chairperson shall be the individual holding the position of Director of the Division of Design Services who shall assemble a separate committee for each claim or group of claims arising under a single contract. The Chairperson, within his or her sole discretion, shall appoint two additional voting members, each of whom shall hold one of the following three positions within the Department:

1. Director of the Division of Accounting and Auditing;
2. Director of the Division of Project Management; or
3. Manager of the Bureau of Quality Management Services.

(c) In addition to the three voting members under (b) above, the Claims Committee shall have a Secretary who shall be a Department of Transportation employee. The Secretary may participate in deliberations but shall not have a vote as to recommendations. The Claims Committee shall also have a Deputy Attorney General assigned by the Division of Law who shall act as the legal advisor to the Committee but who shall not have the right to vote.

(d) As to claims arising under contracts administered by Transportation Operations, the Claims Committee shall be comprised of three voting members. The Chairperson shall be the individual holding the position of Director of the Division of Operations Support, who shall assemble a separate committee for each claim or group of claims arising under a single contract. There shall be two additional voting members who shall hold the following positions within the Department:

1. Director of the Division of Accounting and Auditing; and
2. Director of the Division of Design Services.

(e) In addition to the three voting members under (d) above, the Claims Committee shall have a Secretary who shall be a Department of Transportation employee. The Secretary may participate in deliberations but shall not have a vote as to recommendations. The Claims Committee shall also have a Deputy Attorney General assigned by the Division of Law who shall act as the legal advisor to the Committee but who shall not have the right to vote.

Amended by R.1994 d.454, effective September 6, 1994.

See: 26 N.J.R. 2547(b), 26 N.J.R. 3740(c).

Amended by R.1999 d.246, effective August 2, 1999.

See: 31 N.J.R. 1295(a), 31 N.J.R. 2236(a).

Rewrote the section.

Amended by R.2003 d.66, effective February 3, 2003.

See: 34 N.J.R. 2537(a), 35 N.J.R. 622(a).

Rewrote (b) and (d).

Case Notes

Department failed to deal expressly and clearly with effect of administrative review of disputed claims on statute of limitations, and thus could not insist on limitations defense. *W.V. Pangborne & Co., Inc. v. New Jersey Dept. of Transp.*, 116 N.J. 543, 562 A.2d 222 (1989).

Contract was completed when project was accepted and conditional final payment was made, rather than at expiration of one-year surety agreement. *W.V. Pangborne & Co., Inc. v. New Jersey Dept. of Transp.*, 226 N.J.Super. 367, 544 A.2d 423 (A.D.1988) certification granted 114 N.J. 301, 554 A.2d 854, reversed 116 N.J. 543, 562 A.2d 222.